

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of Verizon Pennsylvania, Inc.,	)	
Verizon Long Distance, Verizon Enterprises	)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

**DECLARATION OF CRAIG PLUE  
ON BEHALF OF XO COMMUNICATIONS, INC.**

1. My name is Craig Plue. My business address is 925 Berkshire Boulevard, Wyomissing, Pennsylvania. I am employed by XO Pennsylvania, Inc. ("XO")<sup>1</sup> as Manager of Service Delivery for the Washington DC Market, and the Subject Matter Expert (SME) for Provisioning in the Washington, DC and Pennsylvania markets. My job responsibilities include all facility deliveries and all porting in the Pennsylvania market. Facility delivery includes special access, Unbundled Network Elements ("UNEs"), Synchronous Optical Network ("SONET") and Optical Carrier ("OC-Ns"). In fact, the facilities provided for a T-1 (24 lines) or larger under special access and UNE are the same. They are provided through the same ordering process (access service request). Between 70% - 80% of XO's facilities secured from Verizon PA involve T-1, or larger, circuits.

2. I graduated from Albright College, Reading, Pennsylvania with a Bachelor of Arts Degree in 1993. I graduated from Widener University School of Law with a Juris Doctorate in 1999. I have been employed by XO for 3 years.

---

<sup>1</sup> XO Pennsylvania, Inc., is a wholly-owned subsidiary of XO Communications, Inc.

3. My comments address four issues: 1) Verizon's rejection of XO's high capacity UNE orders; 2) obstacles created by Verizon which make EELs unavailable to XO; 3) Verizon's errors and inadequate responses in XO's white pages listings; and 4) Verizon's unilateral efforts to amend reciprocal compensation provisions of XO's interconnection agreement.

#### **VERIZON'S REJECTION OF XO'S HIGH CAPACITY UNE ORDERS**

4. XO transmits its orders for Special Access T-1 ("SA") or DS-1 UNE (also 24 lines) through both Verizon PA's Carrier Services Gateway ("CSG") and through ASR Exchange, and electronic interface with Verizon. Since April, 2001, in response to several orders in PA for DS-1 UNEs, Verizon's TISOC (Pennsylvania) has rejected several of XO's high capacity UNE orders on the grounds that there are no UNE facilities available, and has directed XO to cancel such orders and resubmit them under Verizon's federal tariffs as special access orders, and that Verizon is not required to build, and would not build, new UNE facilities. In each such instance, Verizon has also advised XO that if we resubmitted the order as a Special Access order, they would build facilities.

5. On or about June 5, 2001, I inquired about this matter with our Verizon Account representative, Bob Nasca, and he responded in an email that the TISOC was correct in rejecting XO's orders because there were no UNE facilities available. He mentioned that he did not have the exact regulatory language, but that Verizon is not required to build a facility in order to fulfill a UNE request.

6. Since this matter was first brought to my attention, XO has had at least eight (8) UNE DS-1 orders rejected because there were no facilities. In each case, in order to meet the needs of our customers, XO has withdrawn its UNE orders and resubmitted them as Special Access orders. Further, in each of these cases XO has since received FOCs (Firm Order Commitments) or the actual facilities themselves.

7. As the Manager of Provisioning in PA, I review Verizon's tariffs, from time to time, to understand the rules associated with the services we buy from Verizon. I am not certain whether Verizon's FCC No.1 tariff for Special Access services and its PA Tariff No. 216 for UNE services contain language that states that Verizon is not required to build facilities when facilities are not available. However, in the three years that I have been at XO in PA, Verizon has never refused to build Special Access facilities. This point is also underscored by the fact that on the Special Access side of Verizon's operations, they seem to have an infinite number of people available to process and handle CLEC orders; however, on the UNE side of Verizon's operations, they seem to have significantly fewer people assigned to process and handle CLEC orders for service.

8. XO views high capacity UNEs as an essential service and an important part of our facilities-based mode of entry into the local exchange market. When Verizon rejects XO's orders for high-capacity UNE facilities because they are "unavailable" and refuses to build new UNE facilities, they force XO to order the same circuits out of Verizon's federal tariff as a special access service – and to pay the higher, non-TELRIC rate. Moreover, by insisting that XO withdraw its UNE orders in those circumstances, Verizon manages to avoid performance standards and remedies in place for UNE services in PA. Unfortunately, in order to provide service to its customers and compete with Verizon in PA, XO is forced to adhere to Verizon's directive.

9. In the face of Verizon's historic practice of always building facilities for Special Access circuits, there should be little doubt that Verizon's practice of refusing to construct new UNE facilities has the effect of distorting UNE performance standards and remedies and compelling XO to pay Verizon higher rates for these essential high capacity services.

### **OBSTACLES TO ACQUIRING EELs**

10. With respect to the availability of EELs, XO has two primary issues. (1) Verizon refuses to convert qualifying circuits to EELs when those circuits are being

provisioned using facilities that also provide special access or other tariffed services; (2) Verizon imposes huge termination liability and nonrecurring charges to convert existing special access circuits to EELs.

#### **PARTIAL CONVERSION OF CIRCUITS:**

11. With respect to the first issue, for example, XO may have purchased a DS3 from the Verizon tariff for special access, but is using a DS-1 within that DS-3 to connect via a MUX to a loop to provide dial tone for an end user customer. Verizon refuses to permit XO to convert that existing combination of DS-1 and loop into an EEL because the DS-1 and the MUX are part of tariffed special access facilities. Instead, Verizon proposes that XO order a separate, stand-alone MUX/DS-1 circuit. Not only does Verizon's solution require that the customer be taken out of service for a period of time to be migrated to a new circuit, but also Verizon would compel XO to forgo the economic and network efficiencies of using a large circuit for multiple purposes. Verizon's restriction on converting EELs provisioned over a multiple use facility has nothing to do with technical feasibility, nor is access bypass a consideration as long as the CLEC provides the local certification required by the FCC. One DS-3 has a capacity of 28 DS-1s and costs less than half the amount Verizon charges for 28 individual DS-1s. Obviously, an efficient company seeking to minimize its costs will use a DS-3 if it needs capacity of more than 10 or so DS-1s and will attempt to use as much of the DS-3 capacity for as many different purposes as possible.

#### **TERMINATION LIABILITY:**

12. For several years Verizon has avoided or refused to provide high capacity circuits as UNEs, despite the requirement to do so in the Act and FCC rules and orders. In PA, XO was required to arbitrate this issue before Verizon would permit XO to obtain EELs in its interconnection agreement. As a result, the only way XO could obtain these

facilities from Verizon for use in providing local service was to order them out of Verizon's tariffs as private line or special access circuits. XO needed these facilities immediately to augment their networks and to be able to provide service to their end user customers, and XO intended to use these circuits indefinitely for that purpose. Accordingly, XO often attempted to minimize the rates paid for these circuits by agreeing to term and/or volume commitments and the corresponding discounts. Now that Verizon is willing to provide high capacity circuits as UNEs, XO seeks to convert Verizon tariffed special access services that XO uses to provide local service to UNEs, but Verizon is insisting that XO must pay significant penalties for terminating these tariffed services.

13. Verizon's insistence on imposing termination liability for converting tariff special access services to UNEs is unreasonable in several respects. First, XO is continuing to use and pay for the facilities. XO is simply paying the UNE, rather than tariff, rates for those facilities. Thus, no "termination" has occurred. Second, termination liability is appropriate only to compensate Verizon for costs it would have recovered over the life of the term but will not recover if the term ends prematurely. UNE rates are fully compensatory. Verizon, therefore, will continue to recover its costs of providing the facilities following conversion of the tariff services to UNEs and is not entitled to a windfall of pure profit in termination penalties on top of full compensation. Third, termination liability adds insult to injury in these circumstances. In many instances, XO ordered circuits from Verizon out of the tariff because that was XO's only alternative in light of Verizon's refusal to make them available as UNEs. XO thus has already paid far more for these circuits than it should have paid as a result of Verizon's refusal to comply with its legal obligations, yet Verizon seeks to impose even greater financial penalties on XO simply for enforcing its rights. Indeed, termination liability payments are more financially burdensome than continuing under the tariff because XO would be compelled to pay the difference between the tariff and UNE rates - or more - in one lump sum, rather than spread out over the remaining term.

14. Converting a tariff service to UNEs requires nothing more than a billing and records change. Verizon adds insult to injury by insisting on such costs from CLECs requesting nothing more than the UNE pricing to which they have been entitled since 1996.

**VERIZON'S ATTEMPT TO UNILATERALLY MODIFY XO'S  
INTERCONNECTION AGREEMENT**

15. XO adopted an existing MCI interconnection agreement in Pennsylvania. XO and Verizon executed this interconnection agreement, and amendments, in Pennsylvania with an effective date of June 2, 2000. While the initial term of that agreement expired on August 31, 2000, the terms of that agreement continue in full force and effect, on a month-to-month basis.

16. In a notice dated May 14, 2001, Verizon advised XO that it would unilaterally implement certain terms and conditions of the intercarrier compensation Order adopted by the Federal Communications Commission in its Order on Remand and Report and Order at CC Docket Nos. 96-98 and 99-68 on April 18, 2001. Verizon's notice provided that these terms and conditions would take effect no earlier than thirty days after publication of the Order in the Federal Register.

17. More recently, in a letter to XO Pennsylvania from Jack H. White, Verizon Vice President and General Counsel, dated June 26, 2001, Verizon stated: "Although it is Verizon's position that the compensation regime set forth in the Order on Remand is self-effecting by operation of various provisions of your interconnection agreement, including its change of law provisions, Verizon has prepared a short amendment, attached hereto, that conforms your agreement to the terms of the Order on Remand." XO has advised Verizon that it does not agree that the Order on remand is "self-effecting" by operation of provisions of its interconnection agreement or that Verizon's proposed amendment conforms our agreement to the terms of the Order.

XO strongly objects to Verizon's unilateral attempt to modify the terms of our existing interconnection agreement. Our Agreement provides in pertinent part:

"In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this agreement, or which materially reduce or alter the service required by statute or regulation and embodied in this agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rule, regulations or orders. In the event the Parties cannot agree on an amendment within 30 days after the date any such rules, regulations or orders become effective then the Parties shall resolve their dispute under the applicable procedures set forth in Section 24 (Dispute Resolution Procedure) hereof." Part A, Section 2.2.

### **VERIZON'S ERRORS AND INADEQUATE RESPONSES IN XO'S WHITE PAGES LISTINGS PROBLEMS**

18. XO provided substantial testimony and exhibits in the PA proceedings concerning Verizon's white pages errors and omissions. In the PA proceeding, XO proprietary exhibits Nos. 3, 4 and 5 provided several examples of errors on individual customer listings in the Allentown/Bethlehem, Harrisburg and Philadelphia directory Listing Verification Report (LVR) where XO specifically requested that the listing remain the same. Notwithstanding the PA PUC's action and Verizon's representations concerning corrective action, Verizon has failed to address the central cause for most of these errors by refusing to immediately cease the manual retyping of CLEC directory listings in its process.

19. While Verizon claims that it has procedures in place to ensure that directory listings of CLECs are accurate, reliable and nondiscriminatory, XO disagrees. XO believes that Verizon's error rate for UNE platform CLECs, Resale CLECs, and Verizon's own listings are significantly less than that of facilities-based CLECs, such as XO. Although Verizon has proposed various fixes to address the problem of manual retyping, resolution of this white pages listing problem must also include the addition of a performance metric to measure the accuracy of directory listings, as opposed to the current metric in PA which only measures the timeliness of Verizon's mailing of the LVR. This Commission, should also seriously consider other proposals offered by the

Office of Trail Staff (OTS) in PA. The OTS recommended increased “flow through” of CLEC listings, eliminating the middleman in this process and causing Verizon systems to default to leaving a listing “as is” unless specifically changed by a CLEC on its order.

XO strongly agrees with the PA OTS on these points.

20. Finally, Verizon has suggested that errors in XO listings are compounded by XO’s practice of working directly with Verizon’s White Pages organization to correct such errors. This suggestion defies logic. XO has testified on more than one occasion in PA that Verizon specifically approved the process followed by XO. Further, XO’s experience with Verizon’s white pages listing errors extends back as far as June 15, 1998, when XO was required to file a Petition for Emergency relief with the PA PUC in order to address the same type of CLEC listing errors and omissions complained of today. Both the duration and frequency of these problems have caused XO to hire employees whose sole responsibility is to police the Verizon white pages for errors. These problems have, and do, undermine the competitive position of XO and other CLECs in the PA marketplace.



## VERIFICATION

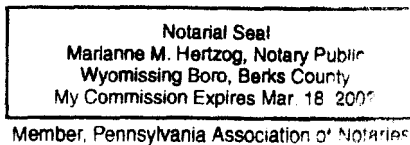
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information, knowledge and belief.

Craig Plue  
Craig Plue

Dated: July 10, 2001

Sworn to & subscribed to this  
10<sup>th</sup> day of July, 2001

Marianne M. Hertzog, Notary



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of Verizon Pennsylvania, Inc.,	)	
Verizon Long Distance, Verizon Enterprises	)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

**EXHIBIT B**

**May 21, 2001 Letter from counsel for AT&T to the Honorable Jaclyn Brillling,  
*Verizon Special Services Investigation*, Case No. 00C-2051 (NY PSC)**



Philip S. Shapiro  
Senior Attorney  
Law and Government Affairs

Suite 706  
111 Washington Avenue  
Albany, New York 12210-2213  
Tel. 518-463-2555  
Fax 518-463-5943  
E-Mail: pshapiro@lga.att.com

May 21, 2001

Hon. Jaclyn Brilling  
Administrative Law Judge  
Public Service Commission  
Agency Building Three  
Empire State Plaza  
Albany, New York 12223

Re: Case 00-C-2051, Verizon Special Services Investigation

Dear Judge Brilling:

AT&T Communications of New York, Inc., TC Systems, Inc., and ACC Corp. submit these comments regarding the May 4, 2001, reply of Verizon New York, Inc., (Verizon) to the April 30, 2001, letter of Independent One Wireless Corporation.

On page 1 of its letter, Verizon states:

Although Verizon's tariff permits it to turn customers away where facilities are not available to provide them with Special Services, it has never done so. Nor are Special Services "essential services" used as a mode of entry into the local exchange market.

Verizon's statement fails to address the fact that where no high-capacity facilities are present and a wholesale customer orders UNE special facilities, Verizon does refuse to build new UNE special facilities, thus requiring the wholesale customer to order the same service under Verizon's Federal tariff and to pay the higher, non-TELRIC rate – if the wholesale customer wishes to compete with Verizon for end users which use special services.

On many occasions when UNE special facilities are not available to a given end-user's location, Verizon has flatly refused to build such facilities on the ground that its

State tariff for wholesale UNE special facilities does not require Verizon to undertake such construction.<sup>1</sup> In such cases, Verizon has instructed AT&T to cancel its UNE order. If AT&T wants to serve its prospective retail special services customer in such circumstances, AT&T must place a new order for the same wholesale product under Verizon's Federal special access tariff. The order confirmations for such orders indicate by their fulfillment intervals that Verizon will satisfy the request for special access (under the Federal tariff) by means of constructing new facilities.

Verizon's practice of relying upon a clause in its State tariff to justify its refusal to construct new UNE special facilities has the practical effect of compelling its wholesale customers to receive an essential service at costlier, non-TELRIC prices. This constitutes a substantial barrier to entry.

The PSC must remove all restrictions on the availability of wholesale UNE special services and take all other appropriate action to ensure that CLECs have an opportunity to compete on a level competitive basis with Verizon in the retail special services market. If Verizon is unwilling to reform its wholesale business practices to support a fair marketplace, the PSC should direct that Verizon's retail special services be offered by a separate subsidiary which in all respects will obtain services from Verizon's wholesale special services business unit on an arm's-length and non-preferential basis.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Philip S. Shapiro". The signature is fluid and cursive, with the first name "Philip" and last name "Shapiro" clearly distinguishable.

Philip S. Shapiro

cc(w/encl.): All Parties

---

<sup>1</sup> Verizon also refers to UNE special facilities by the acronym "HCFU," the first four characters of the circuit identification codes assigned to each such high-capacity facility.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of Verizon Pennsylvania, Inc.,	)	
Verizon Long Distance, Verizon Enterprises	)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

**EXHIBIT C**

**Declaration of Ronald L. Reeder on behalf of CTSI, Inc.**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of Verizon Pennsylvania, Inc.,	)	
Verizon Long Distance, Verizon Enterprises	)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

**DECLARATION OF RONALD L. REEDER  
ON BEHALF OF CTSI, INC.**

1. My name is Ronald L. Reeder. I am currently employed by CTSI, Inc. ("CTSI") as Senior Manager – Regulatory and Public Affairs. My business address is 3950 Chambers Hill Road, Harrisburg, Pennsylvania 17111 and my work telephone number is (717) 901-9142. I am submitting this Affidavit in support of the Joint Comments filed in the above-captioned proceeding.

2. I have been employed by CTSI since 1998. My current responsibilities include oversight of CTSI's regulatory and public affairs matters. I have over twenty-eight years experience in the telecommunications industry, including more than twenty-five years at Sprint-United Telephone in Pennsylvania and Kansas. I have a bachelor's degree in business from Shippensburg University.

3. CTSI provided substantial, detailed evidence in the state proceeding demonstrating that Verizon has and is continuing to omit or inaccurately list hundreds of CTSI white pages directory listings. Specifically, CTSI's highly proprietary responses to Verizon discovery requests (Verizon Exhibit No. 9) provided examples of over 1000 directory listing errors for CTSI customers in Hazelton and Wyoming Valley that CTSI identified to Verizon. CTSI requested revision of these listing prior to publication of the final directory, yet a significant percentage of the listings were not corrected.

4. Contrary to Verizon's claims, CTSI did not admit that Verizon has provided CTSI customers directory listings with 99% accuracy. Rather, CTSI demonstrated that, considering only those errors to which Verizon admitted, Verizon committed 10 to 30 times as many errors with respect to CTSI's directory listings as Verizon committed for its own retail customers. CTSI further demonstrated that if an equivalent proportion of the errors Verizon claimed were "unsubstantiated" were included in the calculation, Verizon committed nearly 40 times as many errors in CTSI's customers' directory listings than Verizon committed for its own retail customers.

5. Verizon failed adequately to respond to this evidence and instead claimed that many of the errors were unsubstantiated because it lacked the internal documentation to verify CTSI's claims. Regardless of whether an initial error on a Listing Verification Report ("LVR") could be attributed to Verizon or to CTSI, Verizon did not even address the fact that, despite CTSI's substantial efforts to provide Verizon the information necessary to correct inaccurate or omitted listings, Verizon failed to incorporate many of the revisions.

6. Verizon claims that it is in the process of implementing certain measures to increase the accuracy of CLEC directory listings. However, if Verizon's proposals are little more than cosmetic fixes; they do not address the real problem with Verizon's directory listing process – the manual intervention and retyping of directory listing information onto a service order. Moreover, Verizon has not committed to any actual changes in its process. Rather, Verizon has stated that it will work with interested parties to attempt to develop a means to address some of the directory listings concerns. Verizon has stated that it "will endeavor" to provide software changes to its system by February 2002, but has not provided a firm deadline for implementation of the change. Given Verizon's past performance, it is likely that the February 2002 date will come and go without CLECs seeing even a proposal for addressing their concerns.

7. Even if Verizon could be taken at its word to develop a solution to some of the directory listing problems, CLECs cannot be assured that Verizon will follow through with its "commitments" unless this Commission establishes an appropriate performance measurement,

with detailed timelines and performance requirements and substantial penalties for non-compliance. Without some form of monetary disincentive to backsliding and non-compliance, Verizon will retain its current incentive to delay implementation of mechanisms that will benefit its competitors.

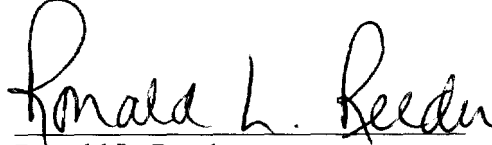
8. Approximately 30 business days from the date a particular White Page directory is due to be published, CTSI receives from Verizon an LVR containing all of CTSI's customers' listing information that will be included in the upcoming directory. The LVR, which often contains thousands of CTSI customers listings, is the first opportunity CTSI has to review its listing information and provide updates and/or revisions to Verizon prior to publication of the directory.

9. CTSI carefully reviews the information in its LVR, corrects any incomplete, missing or inaccurate listings and promptly provides the revised information to Verizon. It is not unusual for CTSI to identify hundreds of incorrect listings during its review of the LVR. Nonetheless, CTSI prepares detailed revisions to the incorrect listings and provides that information to Verizon to incorporate into the published directory. Given the potentially large number of customers on an LVR and the limited amount of time given CTSI to review and provide updates to that information, CTSI often devotes significant resources and personnel to identifying and correcting omitted or inaccurate directory listings, many of which could be eliminated if Verizon's manual ordering process was revised.



## VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information, knowledge and belief.

  
Ronald L. Reeder

Dated: July 10, 2001

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of Verizon Pennsylvania, Inc.,	)	
Verizon Long Distance, Verizon Enterprises	)	CC Docket No. 01-138
Solutions, Verizon Global Networks, Inc., and	)	
Verizon Select Services Inc. for Authorization	)	
To Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

**EXHIBIT D**

**June 13, 2001 Letter from Executive Secretary, Maryland Public Service Commission, to counsel for Core Communications and Verizon Maryland, Inc.**

## COMMISSIONERS

## STATE OF MARYLAND

CATHERINE I. RILEY  
CHAIRMANCLAUDE M. LIGON  
SUSANNE BROGAN  
J. JOSEPH CURRAN, III  
GAIL C. McDONALDSUSAN S. MILLER  
GENERAL COUNSELFELECIA L. GREER  
EXECUTIVE SECRETARYGREGORY V. CARMEAN  
EXECUTIVE DIRECTOR

## PUBLIC SERVICE COMMISSION

June 13, 2001

VIA FACSIMILE & U.S. MAILMichael B. Hazzard, Esquire  
Kelley Drye & Warren LLP  
Tysons Corner  
8000 Towers Crescent Drive, Suite 1200  
Vienna, Virginia 22182David A. Hill, Esquire  
Vice President & General Counsel  
Verizon Maryland Inc.  
One East Pratt Street, 8E  
Baltimore, Maryland 21202

Dear Messrs. Hazzard and Hill:

On May 31, 2001, Core Communications, Inc. ("Core") filed a Petition for Expedited Declaratory Ruling ("Petition") with the Public Service Commission ("Commission"). Core requests that the Commission prevent Verizon Maryland Inc. ("Verizon") from "unilaterally" implementing the Federal Communications Commission's ("FCC") recent order governing reciprocal compensation payments.<sup>1</sup> According to Core, the FCC's new intercarrier compensation regime may only be implemented through the interconnection agreement amendment process. Core requests that the Commission declare:

1. Verizon must negotiate amendments to existing interconnection agreements through the change of law provision in order to avail itself of the *FCC Intercarrier Compensation Order*;
2. Any such amendment must be approved by the Commission in accordance with the Commission's standard procedures for reviewing and approving amendments to existing interconnection agreements; and

<sup>1</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Remand, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Report and Order (rel. Apr. 27, 2001) ("FCC Order").

WILLIAM DONALD SCHAEFER TOWER • 6 ST. PAUL STREET • BALTIMORE, MARYLAND 21202-5806

410-767-8000

Toll Free: 1-800-492-0474

FAX: 410-333-6495

MDRS: 1-800-735-2258 (TTY/Voice)

Website: [www.psc.state.md.us/psc/](http://www.psc.state.md.us/psc/)

3. Any effort by Verizon to withhold reciprocal compensation payments for ISP-bound traffic prior to Commission approval of an interconnection agreement amendment constitutes a *per se* violation of the interconnection agreement and the Commission's orders.

Core's request was precipitated by receipt of a letter from Verizon stating the Verizon would refuse to pay invoiced amounts which exceed Verizon's interpretation of the FCC's Order. Core contends that the FCC Order is not self-executing. As noted earlier, Core petitions the Commission to declare that any action by Verizon to withhold reciprocal compensation payments for internet service provider bound traffic constitutes a *per se* violation of interconnection agreements and the Commission's reciprocal compensation orders.<sup>2</sup>

Verizon responded to Core's Petition on June 11, 2001. Verizon contends that this Commission has already ruled that Core is no longer entitled to receive reciprocal compensation for Internet traffic. Verizon further contends that Core misconstrues the change of law provisions contained in the interconnection agreement. Verizon also states that in this instance, no amendment is necessary. Finally, Verizon claims that the FCC has preempted the State Commissions on the issue of the compensation mechanism and rates for Internet traffic. Thus, according to Verizon, the Commission lacks the legal authority either to revise its previous reciprocal compensation decision or to approve or deny amendments concerning Internet traffic.

The Commission has carefully reviewed both the Petition and the response. The Commission finds that Verizon's position ignores the clear directive of the FCC that its intercarrier compensation mechanism only applies prospectively. In this regard, the FCC specifically stated:

The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here.<sup>3</sup>

---

<sup>2</sup> The Commission also received a joint letter supporting Core's Petition from the Association for Local Telecommunications Services, Competitive Telecommunications Associations, e.spire Communications, Inc. and Net2000 Communications Services, Inc.

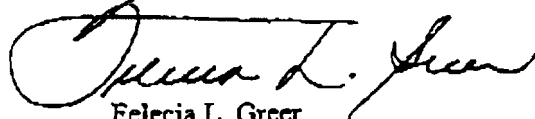
<sup>3</sup> *Id.* at para. 82.

Michael Hazzard, Esquire  
David Hill, Esquire  
June 13, 2001  
Page 3

Thus, contrary to Verizon's contention, the FCC Order is not "self-executing." As directed by the FCC, Verizon may implement the interim compensation regime only through the contractual change-of-law provisions. The Commission's previous order establishing reciprocal compensation cannot override this clear directive from the FCC.

Based upon the foregoing analysis, the Commission hereby grants Core's Petition. Verizon is directed to negotiate amendments to existing interconnection agreements. Furthermore, Verizon is prohibited from withholding reciprocal compensation payments until the amendments to the agreements are approved by the Commission. As required in the change of law provisions, if the Companies cannot negotiate an amendment to the interconnection agreement, the Parties shall resolve their dispute under the applicable procedures set forth in the interconnection agreement.

By Direction of the Commission,

A handwritten signature in cursive script, appearing to read "Felecia L. Greer".

Felecia L. Greer  
Executive Secretary